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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/772,674
Filing Date: February 04, 2004
Appellant(s): LIPTON ET AL.

Vincent J. Gnoffo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 07/16/2009 appealing from the Office action mailed on 08/29/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,819,029	Edwards et al.	10-1998
5,887,253	O'Neil et al.	03-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 34-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. US 5,819,029 in view of O'Neil et al. US 5,887,253.

9.1 Regarding claims 34 and 46, Edwards discloses a third party verification system in figure 1, comprising:

a receiver (a telephone interface in the system controller 112) associated with a third party verification (TPV) service to receive, during a telecommunication call, a reply message (a customer's oral confirmation of switching service provider; column 12, lines 63-67) to confirm an authorized switching to a new long distance service (a telephone service inherently has term and condition) (column 9, line 41 to column 10, line 63; column 12, lines 59-67);

a processor (system controller 112) in communication with the receiver;
a database (IVR response repository 114) in communication with the processor;
and

wherein the processor creates a record (a customer's response to verification questions; column 15, lines 35-61) in the database, including audio recordings of affirmative acceptance of the long distance service (column 13, line 66 to column 14, line 23; column 15, lines 27-61).

Edwards teaches agreeing and verifying, without signing a service contract, or without an existing contract, a switch to another a long distance telephone service provider. Edwards is silent on the terms and conditions of a service.

However, O'Neil teaches a voice response unit (VRU) for playing a pre-recorded voice messages (prompts) concerning terms and conditions of a mobile telephone service to a potential customer, and recording responses from the customer. O'Neil teaches prompting the customer to accept terms and conditions, such as charges and payment, and other contract related provisions, without signing a service contract, or without an existing contract (column 13, lines 19-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Edwards' reference with the teaching of O'Neil, so that terms and conditions of a communications service would have been played to and accepted by a customer without signing a service contract, or without an existing contract. The motivation for such a modification was to provide a service provider with

a proof that a customer had understood and approved the terms and conditions of a new service, without an existing signed contract on record.

9.2 Regarding claim 35, Edwards teaches that a spoken reply message indicates an acceptance of a telephone service (column 10, lines 43-55, 61-63; column 12, lines 64-67).

9.3 Regarding claims 36 and 47, Edwards teaches recording subscriber identity information (column 14, lines 1-2).

9.4 Regarding claim 37, Edwards teaches indicating a service provide identity (column 10, lines 49-51; column 12, lines 64-67).

9.5 Regarding claim 38, Edwards teaches timing information of a call (column 6, lines 44-46).

9.6 Regarding claim 39, Edwards teaches the identity of a calling party (telemarketer) (column 10, lines 11-15).

9.7 Regarding claims 40 and 48, Edwards teaches recording a customer's responses to verification prompts (column 10, lines 61-64).

9.8 Regarding claims 41, 49 and 50, it would have been obvious, if not inherent that a service provider would have mailed a customer a printed copy of terms and conditions of a service contract for the customer to sign, and kept the signed copy as a record to avoid any future litigation.

9.9 Regarding claims 42 and 51, Edwards teaches a verbal service message (column 10, lines 49-51; column 12, lines 64-67).

9.10 Regarding claims 43 and 52, Edwards teaches a long distance telephone service (column 10, lines 49-51; column 12, lines 64-67).

9.11 regarding claims 44 and 53, Edwards teaches a voice call which is initiated by a telemarketer (column 9, lines 41-51).

9.12 Regarding claim 45, Edwards teaches conferencing a telemarketer with the verification process, and in that the telemarketer may speak to the customer on intervene at any time (column 10, lines 24-28).

9.13 Regarding claims 54-57, Edwards teaches prompting a customer to say 'yes', or 'no', to a long distance telephone service (column 12, lines 64-67).

(10) Response to Argument

Appellants contend that Edwards and O'Neal fails to teach the claimed limitation of: "the terms and conditions are accepted without a contract" in the current invention. Examiner respectfully disagrees. As stated in the specification of the current invention, terms and conditions are accepted without signing a (paper) contract, see page 8, lines 7-12 of the Specification. Also in the second paragraph of page four (4) of the Appeal Brief, appellants state that the terms and conditions are accepted without signing a contract, i.e. there is no existing contract when the terms and conditions are accepted.

As stated in the rejection above, Edwards teaches prompting a customer to verify an acceptance of a communications service, without signing a service contract, or without an existing contract. O'Neil teaches verifying an acceptance of terms, conditions, charges, payment, and other contract provisions of a telephony service, also without signing a service contract, or without an existing contract. Therefore, Edwards as modified by O'Neil, stated in the rejection for claims 34 and 36, teaches accepting terms and conditions of a service without signing a service contract, or without an existing contract.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Simon Sing/

Primary Examiner

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